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09/866,544

05/25/2001

Brent C. Abraham

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07/05/2006

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EXAMINER

PATEL, JAGDISH

ART UNIT

PAPER NUMBER

3693

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/866,544

Applicant(s)

ABRAHM ET AL.

Examiner

JAGDISH PATEL

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-132 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 11, 12, 16, 17, 20, 47, 55, 56, 60, 61, 64, 91, 99, 100, 104, 105 and 108 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1, 2, 4-10, 13-15, 18, 19, 21-46, 48-54, 57-59, 62, 63, 65-90, 92-98, 101-103, 106, 107 and 109-132 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/18/02</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 1,2,4-10, 13-15,18,19,21-46,48-54,57-59,62,63,65-90,92-98,101-103,106, 107 and 109-132.

DETAILED ACTION

1. This office action is in response to the application filed 05/25/2001 and subsequent election of claims by the applicant on 6/8/06.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claim 1 is, drawn to a system for transacting like-kind exchanges which is programmed for transacting a replacement of a relinquished property wherein a taxpayer transacts a relinquishment for divestment a property a replacement of the relinquished property is transacted by a replacement property provider for a like-kind replacement property.

II. Claim 2 is, drawn to a system for transacting like-kind exchanges which is programmed for an exchange of a property to be relinquished by a taxpayer who transacts the exchange of the property for a like-kind replacement property.

III. Claims 3-43 are, drawn to a system for transacting like-kind exchanges which is programmed to transact an exchange of a property to relinquished for a like-kind replacement property between a taxpayer, a relinquished property owner and at a replacement property provider.

3. The inventions are distinct, each from the other because of the following reasons:

Inventions I-III are directed to related inventions. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as

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claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, Invention I is exclusively used for a transacting like-kind exchanges wherein a tax-payer performs a transaction of relinquishment for divestment of a property and the replacement of the relinquished property is transacted by at least one replacement property provider. Invention II is exclusively used for a transacting like-kind exchanges wherein the replacement of the relinquished property is transacted by a taxpayer. Invention II is exclusively used for a transacting like-kind exchanges wherein the replacement of the relinquished property is transacted between a taxpayer, at least one relinquishment property receiver and at least one property provider. The inventions are also distinct because distinct set of tax-deferred treatment rules would be applicable in each case.

4. In the event the applicant elects Invention III, further election of one of the Species from the following list must be identified for prosecution.

Invention III contains claims directed to the following patentably distinct species:

Species 1: claim 3, 16-17, 20 and 4 : directed to batch deposit proceeds.

Species 2: claims 3, 16-17, 20 and 5: directed to online interface.

Species 3: claims 3, 16-17, 20 and 6: directed to specific embodiment of transacting a relinquishment of a first by the taxpayer.

Species 4: claims 3, 16-17, 20 and 7-8: directed to organizing the information about an exchange intermediary in an electronic database and then formatting electronic communication with each exchange intermediary.

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Species 5: claims 3, 16-17, 20 and 9: directed to comparing a set of parameters describing a proposed like-kind exchange transaction input by the taxpayer.

Species 6: claims 3, 16-17, 20 and 10: directed to comparing a set of parameters describing a proposed like-kind exchange transaction input by the taxpayer with a set of rules by which like kind exchange transactions qualify for tax-deferred treatment.

Species 7: claims 3, 16-17, 20 and 11-12: directed to prompting the taxpayer to identify a first type of a first property to be relinquished, a second type of a second property to replace the first property, and a plurality of parameters that characterize a proposed exchange of the second property for the first property.

Species 8: claims 3, 16-17, 20 and 13: directed to determining a schedule of deadlines by which a plurality of phases must be completed for an exchange of a first property to be relinquished by the taxpayer for a second property to replace the first property.

Species 9: claims 3, 16-17, 20 and 14-15: directed to calculating a deadline date in a specific algorithmic manner.

Species 10: claims 3, 16-17, 20 and 18: communicating a first set of exchange transaction information to one of said relinquished property receivers comprising: a set of wiring instructions and a set of assignment information.

Species 11: claims 3, 16-17, 20 and 19: collecting a notification of wired funds from a bank for a particular relinquished property receiver for the benefit of the taxpayer; recording a deposit of the wired funds into a general account for the benefit of the taxpayer; and notifying an exchange intermediary administrator of the recorded deposit of the wired funds into a general account for the benefit of the taxpayer.

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Species 12: claims 3, 16-17, 20 and 21: collecting wire transfer instructions proposed transfer of a replacement property.

Species 13: claims 3, 16-17, 20 and 22: evaluating a set of parameters describing a proposed like-kind exchange transaction for the taxpayer according to a set of rules by which like-kind exchange transactions qualify for tax-deferred treatment.

Species 14: claims 3, 16-17, 20 and 23: transfer funds on behalf of the taxpayer from a system level account to a bank and bank account specified by one of said replacement property owners; obtain transfer of ownership of a replacement property from the replacement property owner; and transfer ownership of the replacement property to the taxpayer.

Species 15: claims 3, 16-17, 20 and 24: establish through collecting input from the taxpayer characterizing a proposed exchange of two properties an intent by the taxpayer to treat a sale of a first property to be relinquished and a subsequent reinvestment of proceeds received from the sale of the first property into a purchase of a like-kind replacement second property as a like-kind exchange that qualifies for tax-deferred treatment under a set of rules.

Species 16: claims 3, 16-17, 20 and 25: collect from the taxpayer input characterizing an intent by the taxpayer to treat a sale of at least one property to be relinquished and a subsequent reinvestment of proceeds received from the sale of the relinquished property into a purchase of at least one like-kind replacement property as a like-kind exchange that qualifies for tax-deferred treatment under a set of rules.

Species 17: claims 3, 16-17, 20 and 26: generating for electronic execution by the taxpayer an online exchange agreement input interface for collecting input by the taxpayer of an agreement by the taxpayer to a set of terms according to which a first property to be relinquished

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will be exchanged for a second property to replace the relinquished property.

Species 18: claims 3, 16-17, 20 and 27: collecting input from the taxpayer that electronically characterizes an agreement by the taxpayer to a set of terms by which a first property to be relinquished will be exchanged for a second property with which to replace the relinquished property.

Species 19: claims 3, 16-17, 20 and 28: collecting an electronic signature from the taxpayer to an online exchange agreement that electronically characterizes an intent by the taxpayer to treat a sale of a first property to be relinquished and a subsequent reinvestment of proceeds received from the sale of the relinquished property into a purchase of a second like-kind replacement property as a like-kind exchange that qualifies for tax-deferred treatment under a set of rules.

Species 20: claims 3, 16-17, 20 and 29: generating for electronic execution by the taxpayer an online exchange agreement input screen for collecting an indication by the taxpayer of agreement by the taxpayer to a set of terms by which multiple properties to be relinquished will be exchanged for multiple replacement properties.

Species 21: claims 3, 16-17, 20 and 30: collecting input from the taxpayer of an agreement by the taxpayer to a set of terms by which multiple properties to be relinquished will be exchanged for multiple properties with which to replace the relinquished properties.

Species 22: claims 3, 16-17, 20 and 31: collecting an electronic signature from the taxpayer to an online exchange agreement that electronically characterizes an intent by the taxpayer to treat a sale of a plurality of properties to be relinquished and a subsequent reinvestment of proceeds received from the sale of the relinquished properties into a purchase of a plurality of like-kind replacement property as a like-kind exchange that qualifies for tax-deferred treatment under a set of rules.

Species 23: claims 3, 16-17, 20 and 32: restricting to a given period of time receipt of funds by a given net proceeds account of the taxpayer for receipt of proceeds from a plurality of sales, each sale relinquishing at least one of a plurality of properties.

Species 24: claims 3, 16-17, 20 and 33: opening for a first given period of time a given net proceeds account of the taxpayer for receiving proceeds from a plurality of relinquished property sales, each sale relinquishing at least one of a plurality of properties.

Species 25: claims 3, 16-17, 20 and 34: collecting a first set of exchange transaction information from the taxpayer comprising information about a particular relinquished property receiver to which a proposed sale of a property to be relinquished by the taxpayer will be made, said information comprising an electronic mail address of the relinquished property receiver.

Species 26: claims 3, 16-17, 20 and 35: composing an electronic message to a particular relinquished property receiver identified by the taxpayer, said electronic message comprising a

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set of wiring instructions to an account with an exchange intermediary to which funds for a purchase by the relinquished property receiver of a property to be relinquished by the taxpayer should be wired.

Species 27: claims 3, 16-17, 20 and 36: recording receipt on behalf of one of the taxpayers in to an account with an exchange intermediary a wire transfer of funds for a purchase by a particular relinquished property receiver of a property to be relinquished by the taxpayer.

Species 28: claims 3, 16-17, 20 and 37: recording receipt on behalf of the taxpayer in to an account with an exchange intermediary a plurality of wire transfers of funds for a plurality of purchases, each wire transfer corresponding to a particular purchase by one of the relinquished property receivers of one of a plurality of properties relinquished by the taxpayer.

Species 29: claims 3, 16-17, 20 and 38: : release an assignment of ownership of a property to be relinquished from an exchange intermediary to a particular relinquished property receiver according to a set of terms of a sale agreement.

Species 30: claims 3, 16-17, 20 and 39: reinvest funds held for the taxpayer in a restricted account of an exchange intermediary in a purchase of a second property to replace a previously relinquished first property.

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Species 31: claims 3, 16-17, 20 and 40: electronically communicate a transfer of funds on behalf of the taxpayer from an account with an exchange intermediary to an account with a bank, said bank account corresponding to a particular replacement property provider, said transfer of funds corresponding to a purchase by the taxpayer of a second property with which to replace a first property previously relinquished by the taxpayer.

Species 32: claims 3, 16-17, 20 and 41: electronically communicate a transfer of funds on behalf of the taxpayer from an account with an exchange intermediary to a plurality of accounts, each of the plurality of accounts with one of a plurality of banks, each bank account corresponding to one of the replacement property providers, each transfer of funds corresponding to at least one of a plurality of purchases by the taxpayer of at least one property with which to replace at least a portion of one property previously relinquished by the taxpayer.

Species 33: claims 3, 16-17, 20 and 42: calculate a remaining amount of money in an account with an exchange intermediary benefiting the taxpayer by subtracting a total amount of money transferred from the account to at least one of a plurality of bank accounts, each bank account corresponding to one of the replacement property providers, from a total amount of money transferred into the exchange intermediary account on behalf of the taxpayer wherein each transfer into the exchange intermediary account corresponding to a sale by the taxpayer of a relinquished property.

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Species 34: claims 3, 16-17, 20 and 43: adding as a replacement occurrence each replacement property identified by the taxpayer as part of a particular proposed exchange wherein the taxpayer has not received the replacement property prior to the end of an identification period; calculating a total aggregate fair market value of the replacement properties identified by the taxpayer as part of the particular proposed exchange; calculating an aggregate fair market value of a plurality of relinquished properties relinquished by the taxpayer as part of the particular proposed exchange; calculating a comparison aggregate for the relinquished properties by multiplying the aggregate fair market value of the plurality of relinquished properties time two hundred; comparing the comparison aggregate for the relinquished properties to the total aggregate fair market value of the replacement properties; and notify the taxpayer that no replacement property has been identified if the total aggregate fair market value of the replacement properties exceeds the comparison aggregate for the relinquished properties and if the calculated replacement occurrence exceeds the number three.

Species 35: claims 3, 16-17, 20 and 44: intercepting actual and constructive receipt of funds by the taxpayer for an exchange of a replacement property for a property to be relinquished.

Note that only system claims are identified in the aforementioned species.

Method claims 47-88 and computer program claims 91-132 are associated with corresponding system claims and have been incorporated in respective species.

5. The species are independent or distinct because function(s) of each species is not required to perform the function of all other species. As an example, “batch deposit proceeds” of claim 4

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is not required for the online interface recited in claim 5 and vice versa. Therefore, the species of claims 4 and 5 (see Species 1 and 2 identified above.). Similarly distinctness of each species can be defined with respect to all other species.

6. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, Claims 3, 16-17 and 20 and corresponding method and apparatus claims) are generic (see paragraph 5 below.)

7. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

8. A telephone call was made to the applicant's representative Attorney Marilyn R. Khorsandi, Reg. No. 45,744 on 6/8/06 to request an oral election to the above restriction requirement. Attorney Khorsandi, on 6/16/06, elected species 7 of invention III which include the following claims.

System claims 3, 16-17, 20, and 11-12, , method claims 47, 60-61, 64 and 55-56, and product claims 91, 104-105, 108 and 99-100 (species claims underlined, other claims being generic.)

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. System claims 3, 16-17, 20, and 11-12, corresponding method claims 47, 60-61, 64 and 55-56, and product claims 91, 104-105, 108 and 99-100 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(only exemplary analysis is presented.)

11. The aforementioned Claims are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim because it encompasses any and every apparatus and method that performs the stated process. For example, claim 3 recites the only step (or equivalent structural component) that transacts an exchange of the property. Therefore, one cannot ascertain the scope of the claimed invention.

12. The aforementioned Claims are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that no structure of the system (i.e. an apparatus) is provided.

Claim 3 is an apparatus claim (noting that a computer system is an apparatus in the context of electronic commerce). However, the claim fails to provide any structure or elements of the apparatus. This renders the claim, indefinite and improper.

Dependent claims 16-17, 20, and 11-12 are also rejected as being indefinite as failing to provide any structure of the system claim.

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13. The process step “transact an exchange of ..property..for ..like-kind replacement property between a taxpayer, at least one relinquishment property receiver and at least one replacement property provider” is so broad as to be programmed in a computer system without any specific and concrete procedural steps that facilitate the transaction of exchange. The transacting of an exchange is a result itself which cannot be accomplished without definitive programmed codes that facilitate this result. Furthermore, it is unclear how the computer would be programmed, without undue experimentation, to transact an exchange of the property amongst the parties involved.

Claim Rejections - 35 USC § 101

14. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

15. System claims 3, 16-17, 20, and 11-12, corresponding method claims 47, 60-61, 64 and 55-56, and product claims 91, 104-105, 108 and 99-100 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims do not fall in one of the four categories of invention?”

Referring to claims 3, 47 and 91 do not recite a statutory process or apparatus because (1) the underlying method does not recite a statutory “process” which must set forth a series of steps or acts to performed and (2) the apparatus and system do not specify any structural limitations of the apparatus (for example, claim 3 is directed to a computer system without any structural limitation associated with the computer system).

The claimed invention are not directed to practical application

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Under the Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility a claimed invention must satisfy the requirement that it be directed to a "practical application" which is to mean "the claimed invention physically transforms an article or physical object to a different state or thing, or ... the claimed invention otherwise produces a useful, concrete, and tangible result".

The claimed invention recites a single step of "transacting an exchange" of at least one property for a "like-kind" replacement property among certain parties, however, no specific conditions or protocol is provided whereby the exchange of the property takes place. The process of transacting a property is not recited so as to be deemed "concrete" because the claim lacks any degree of specificity. The claim does recite specific actions to accomplish the exchange of the property. (see also 112(second) analysis).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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18. System claims 3, 16-17, 20, and 11-12, corresponding method claims 47, 60-61, 64 and 55-56, and product claims 91, 104-105, 108 and 99-100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris, et al. ; Deferred exchange regulations issued. (Internal Revenue Service regulations) National Real Estate Investor, v32, n10, p32(2) Sept, 1990

The foregoing claims are alternatively rejected , as being unpatentable over Fellows, et al. "Deferred like-kind exchanges: an analysis of the proposed regulations under section 1031(a)(3)" Tax Executive, 42, n5, 299(10) Sept-Oct, 1990

As per claims 2, 47 and 91 the prior art references cited above teach specific method steps of transacting an exchange of at least one property to be relinquished for at least one like-kind replacement property between a taxpayer, at least one relinquishment property receiver, and at least one replacement property provider.

(see Morris p. 3 "third safe harbor" wherein transfer of like kind exchange of property is transacted among a taxpayer, an intermediary and the ultimate owner).

(see Fellows p. 17 "Qualified Intermediaries").

The cited prior art references fail to teach that the process is implemented on a computer system.

It was known at the time of the invention that merely computer implementing or replacing a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). For example, simply implementing the process of like-kind exchange over a computer system gives

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you just what you would expect from the manual step as shown in the stated references. In other words there is no enhancement found in the claimed step. The end result is the same as compared to the manual method. A computer can simply replaces the manual acts of the invention. The result is the same.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to have the process of transacting like-kind exchange over a computer system have provided a computer program provided for such process because this would speed up the process of like-kind exchange , which is purely known, and an expected result from computerization of what is known in the art.

Regarding claims 11, 12, 16-17 and 20 and corresponding method and apparatus claims it is asserted that such steps are nothing more than extension of the computer implementation and such are inherent to a computerized like kind change process. For example, per claim 11, the taxpayer must provide necessary data of the property that is being relinquished and the property that is being replaced or exchanged which also suggests that the necessary parameters associated with the exchange must also be specified.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748. The examiner can normally be reached on 800AM-600PM M-Th.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 517-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jagdish N. Patel

(Primary Examiner, AU 3624)

6/25/06